

104TH CONGRESS
2D SESSION

H. R. 3762

To assure payment to dairy and livestock producers for milk and livestock delivered to milk processors, livestock dealers, or market agencies.

IN THE HOUSE OF REPRESENTATIVES

JULY 9, 1996

Mr. GUNDERSON (for himself, Mr. ROBERTS, Mr. JOHNSON of South Dakota, and Mr. THORNTON) introduced the following bill; which was referred to the Committee on Agriculture

A BILL

To assure payment to dairy and livestock producers for milk and livestock delivered to milk processors, livestock dealers, or market agencies.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Dairy and Livestock Producer Protection Act of 1996”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—DAIRY INDUSTRY SECURITY RESERVE FUND

Sec. 101. Definitions.

Sec. 102. Establishment of Dairy Industry Security Reserve Fund.

Sec. 103. Establishment of Board of Trustees for Dairy Industry Security Reserve Fund.

Sec. 104. Collection of assessments from milk handlers to fund Reserve Fund.

Sec. 105. Submission and payment of claims of milk producers for nonpayment for milk shipments.

Sec. 106. Preemption of State or local payment security programs.

TITLE II—STATUTORY TRUST FOR LIVESTOCK SELLERS

Sec. 201. Establishment of statutory trust for benefit of sellers of livestock to dealers and market agencies.

TITLE I—DAIRY INDUSTRY SECURITY RESERVE FUND

SEC. 101. DEFINITIONS.

For purposes of this title:

(1) BOARD.—The term “Board” means the Board of Trustees established under section 103 to administer the Dairy Industry Security Reserve Fund.

(2) MILK.—The term “milk” means cow’s milk produced in the 48 contiguous States.

(3) MILK HANDLER.—The term “milk handler” means a person who receives or otherwise acquires milk in commerce before processing or who first processes milk for the purpose of marketing commercially milk or milk products.

(4) MILK PRODUCER.—The term “milk producer” means a person who produces milk in the 48 contiguous States and markets such milk for commercial use.

1 (5) PROCESS.—The term “process” includes
2 the pasteurization, clarification, or separation of
3 milk or the addition of other ingredients or products
4 to milk, except that such term does not include sim-
5 ply the cooling of milk or the commingling of milk
6 with other milk.

7 (6) RESERVE FUND.—The term “Reserve
8 Fund” means the Dairy Industry Security Reserve
9 Fund established under section 102.

10 (7) SECRETARY.—The term “Secretary” means
11 the Secretary of Agriculture.

12 **SEC. 102. ESTABLISHMENT OF DAIRY INDUSTRY SECURITY**
13 **RESERVE FUND.**

14 (a) ESTABLISHMENT.—There is hereby established in
15 the Department of Agriculture a fund to be known as the
16 “Dairy Industry Security Reserve Fund”. Monies in the
17 Reserve Fund shall be available only for the use of the
18 Board.

19 (b) CONTENTS OF RESERVE FUND.—The Reserve
20 Fund shall consist of the following:

21 (1) Amounts collected as assessments under
22 section 104.

23 (2) Amounts collected by States before the date
24 of the enactment of this Act and paid to the Reserve

1 Fund on behalf of milk handlers subject to assess-
2 ments.

3 (3) Amounts borrowed by the Board.

4 (4) Interest from investments made under sub-
5 section (d).

6 (c) USE OF RESERVE FUND.—The Board may use
7 monies in the Reserve Fund to pay—

8 (1) subject to section 103(f), the expenses in-
9 curred by the Secretary or the Board in administer-
10 ing this title; and

11 (2) the claims of milk producers for milk
12 shipped by the producers for which payment is not
13 made on account of the bankruptcy under title 11,
14 United States Code, of a milk handler.

15 (d) INVESTMENT AUTHORITY.—The Board may in-
16 vest monies in the Reserve Fund in general obligations
17 of the United States, in general obligations of a State or
18 political subdivision of a State, in any interest bearing ac-
19 count or certificate of deposit of a bank that is a member
20 of the Federal Reserve System, or in obligations fully
21 guaranteed as to principle and interest by the United
22 States. The Secretary shall provide guidelines to the
23 Board for the exercise of this investment authority.

24 (e) BORROWING AUTHORITY.—The Board may bor-
25 row money for deposit into the Reserve Fund if the Board

1 determines that amounts in the Reserve Fund are insuffi-
2 cient to satisfy approved claims.

3 **SEC. 103. ESTABLISHMENT OF BOARD OF TRUSTEES FOR**
4 **DAIRY INDUSTRY SECURITY RESERVE FUND.**

5 (a) ESTABLISHMENT.—There is hereby established a
6 Board of Trustees to administer the Dairy Industry Secu-
7 rity Reserve Fund, set and collect assessments under sec-
8 tion 104 to provide funds for the Reserve Fund, pay
9 claims made against the Reserve Fund, and perform such
10 other duties as may be assigned to the Board by this title
11 or the Secretary.

12 (b) MEMBERSHIP.—

13 (1) APPOINTMENT OF MEMBERS.—The Board
14 shall consist of nine members appointed by the Sec-
15 retary as follows:

16 (A) One member selected from among milk
17 producers whose farms are located in Region I.

18 (B) One member selected from among milk
19 producers whose farms are located in Region II.

20 (C) One member selected from among milk
21 producers whose farms are located in Region
22 III.

23 (D) One member selected from among the
24 officers or employees of milk handlers that are
25 subject to the assessment under section 104

1 and the principal place of business of which is
2 Region I.

3 (E) One member selected from among the
4 officers or employees of milk handlers that are
5 subject to the assessment under section 104
6 and the principal place of business of which is
7 Region II.

8 (F) One member selected from among the
9 officers or employees of milk handlers that are
10 subject to the assessment under section 104
11 and the principal place of business of which is
12 Region III.

13 (G) Three members selected from among
14 persons who are experts in financial investment
15 or the staffing or administration of relevant
16 Federal programs, as designated by the Sec-
17 retary before the first solicitation of nominees
18 under subsection (c).

19 (2) REGIONAL DISTRIBUTION.—For purposes of
20 making regional appointments of members of the
21 Board under paragraph (1), the 48 contiguous
22 States shall be grouped into three regions as follows:

23 (A) Region I: Alabama, Arkansas, Con-
24 necticut, Delaware, Florida, Georgia, Indiana,
25 Kentucky, Louisiana, Maine, Maryland, Massa-

1 chusetts, Mississippi, New Hampshire, New
2 Jersey, New York, North Carolina, Ohio, Penn-
3 sylvania, Rhode Island, South Carolina, Ten-
4 nessee, Texas, Vermont, Virginia, and West
5 Virginia.

6 (B) Region II: Illinois, Iowa, Michigan,
7 Minnesota, Missouri, North Dakota, South Da-
8 kota, and Wisconsin.

9 (C) Region III: Arizona, California, Colo-
10 rado, Idaho, Kansas, Montana, Nebraska, Ne-
11 vada, New Mexico, Oklahoma, Oregon, Utah,
12 Washington, and Wyoming.

13 (3) TERMS OF MEMBERS; VACANCIES.—Each
14 member of the Board shall serve for a three-year
15 term, except that the Secretary may stagger the
16 terms of the initial members of the Board. A va-
17 cancy on the Board shall be filled in the manner in
18 which the original appointment is required to be
19 made.

20 (4) COMPENSATION.—Members of the Board
21 shall serve without pay, but shall receive a per diem
22 for each day during which they are engaged in the
23 actual performance of services on behalf of the
24 Board and shall be reimbursed for expenses incurred
25 in their service on the Board, including reasonable

1 travel costs and out-of-pocket expenses when re-
2 quired to be away from their home or place of busi-
3 ness in the service of the Board.

4 (5) REMOVAL FOR CAUSE.—The Secretary may
5 remove any member of the Board for good cause
6 shown.

7 (c) NOMINATION PROCESS.—

8 (1) APPOINTMENT FROM NOMINEES.—The Sec-
9 retary shall appoint the members specified under
10 subsection (b)(1) from nominees submitted pursuant
11 to paragraph (2).

12 (2) SOLICITATION OF NOMINEES.—The Sec-
13 retary shall begin the process of filling a particular
14 position on the Board by soliciting the names of per-
15 sons who are qualified to serve as a member of the
16 Board in that position. The Secretary shall accept
17 recommendations from persons who are qualified to
18 serve as a member of the Board in that position or
19 from organizations composed of such persons. The
20 Secretary shall be the final judge of the qualifica-
21 tions of persons to submit recommendations or to
22 serve on the Board.

23 (3) LACK OF NOMINEES.—If nominees are not
24 submitted pursuant to paragraph (2) for a particu-
25 lar position on the Board, the Secretary may make

1 the appointment in such other manner as the Sec-
2 retary may prescribe.

3 (d) BOARD PROCEDURES.—

4 (1) MEETINGS OF THE BOARD.—Within two
5 months after the Secretary has appointed the initial
6 Board, the Board shall convene for its initial meet-
7 ing and elect officers and adopt written bylaws and
8 rules of procedure to govern its meetings. Following
9 the initial meeting, the Board shall meet at the call
10 of the chairperson or as requested by the Secretary,
11 but at least once every six months.

12 (2) QUORUM.—A quorum of the Board shall be
13 five members.

14 (3) NOTICE TO SECRETARY; EX OFFICIO REP-
15 RESENTATION.—The Board shall notify the Sec-
16 retary in advance of each meeting of the Board. The
17 Secretary, or a representative of the Secretary, may
18 attend each meeting as a nonvoting ex officio mem-
19 ber of the Board.

20 (4) CHAIRPERSON.—The members of the Board
21 shall select one of the members to serve as the chair-
22 person of the Board. The chairperson shall serve a
23 one year term of office.

24 (e) STAFF.—The Board may employ or contract with
25 outside entities for such persons as the Board considers

1 to be necessary to assist the Board to perform its duties
2 under this title. The Board shall define the duties of such
3 persons in service to the Board and fix the compensation
4 of such persons. At the request of the Board, the Sec-
5 retary may assign, on a reimbursable basis, employees of
6 the Department of Agriculture to assist the Board.

7 (f) ADMINISTRATIVE EXPENSES.—

8 (1) IN GENERAL.—The Board may incur and
9 pay for administrative and other expenses related to
10 the duties of the Board under this title.

11 (2) LIMITATION.—Expenses incurred or paid by
12 the Board during a fiscal year may not exceed two
13 percent of the total amount in the Reserve Fund at
14 the beginning of that fiscal year. The Secretary may
15 waive this limitation for fiscal years before the Re-
16 serve Fund reaches the maximum capital contribu-
17 tion level specified in section 104.

18 (3) REIMBURSEMENT OF GOVERNMENT
19 COSTS.—As one of the administrative expenses of
20 the Board, the Board shall reimburse the Secretary
21 for all costs incurred by the Secretary—

22 (A) to assist the Board in administering
23 the Reserve Fund or in carrying out this title;
24 and

1 (B) in performing oversight of Board ac-
2 tivities.

3 (g) GENERAL POWERS OF THE BOARD.—

4 (1) BYLAWS AND RULES.—The Board may
5 adopt bylaws and issue rules and regulations govern-
6 ing the manner in which its business may be con-
7 ducted and the powers vested in it may be exercised.

8 (2) SUITS.—The Board may sue and be sued,
9 complain and defend, in any court of law or equity,
10 State or Federal. All suits of a civil nature at com-
11 mon law or in equity to which the Board shall be a
12 party shall be deemed to arise under the laws of the
13 United States, and the United States district courts
14 shall have original jurisdiction thereof, without re-
15 gard to the amount in controversy, and the Board,
16 in any capacity, without bond or security, may re-
17 move any such action, suit, or proceeding from a
18 State court to the United States district court for
19 the district or division embracing the place where
20 the same is pending by following any procedure for
21 removal then in effect.

22 (3) INTERVENTION.—Upon timely application,
23 the Board may raise and may appear and be heard
24 on any issue in a bankruptcy case under title 11,

1 United States Code, in which a milk handler is the
2 debtor.

3 (4) CONTRACT AUTHORITY.—The Board may
4 enter into contracts and agreements as necessary in
5 the conduct of its activities under this title.

6 (5) MISCELLANEOUS AUTHORITIES.—The
7 Board may exercise such other powers incidental to
8 its performance of functions required or authorized
9 for it under this title.

10 (h) REPORTS.—The Board shall submit an annual
11 report to the Secretary and Congress describing the activi-
12 ties of the Board during the preceding fiscal year, expendi-
13 tures from the Reserve Fund during that fiscal year, and
14 the balance of the Reserve Fund at the end of that fiscal
15 year and containing an estimate of anticipated expendi-
16 tures from the Reserve Fund during the fiscal year in
17 which the report is submitted.

18 **SEC. 104. COLLECTION OF ASSESSMENTS FROM MILK HAN-**
19 **DLERS TO FUND RESERVE FUND.**

20 (a) IMPOSITION OF ASSESSMENT.—The Secretary
21 shall require by order that each milk handler shall pay
22 an assessment on all milk acquired by the milk handler
23 and marketed for commercial use. In lieu of collecting an
24 assessment from milk handlers in a State, the Board may
25 accept payments from the State that—

1 (1) were collected before the date of the enact-
2 ment of this title; and

3 (2) are paid on behalf of milk handlers in
4 amounts sufficient to cover the amounts that would
5 be otherwise due from the milk handlers.

6 (b) EXCEPTIONS.—

7 (1) NONCOMMERCIAL PUBLIC HANDLERS.—The
8 Board may exempt from paying an assessment those
9 milk handlers that are noncommercial public users
10 of milk, such as the Armed Forces, prisons, and
11 schools.

12 (2) HANDLERS WHO ARE ALSO PRODUCERS.—
13 A milk handler that is also a milk producer shall not
14 be subject to an assessment if the milk handler only
15 markets milk that is the handler's own production
16 and such milk is produced through a single farming
17 operation. In light of this exception, a milk handler
18 that fails to pay an assessment may not submit a
19 claim as a milk producer under section 105 for
20 losses related to the handler's bankruptcy.

21 (c) AMOUNT OF ASSESSMENT.—The rate of assess-
22 ment shall be established by the Board, except that the
23 rate may not exceed two cents per hundredweight of milk.

24 (d) SUSPENSION OF ASSESSMENTS.—

1 (1) SUSPENSION REQUIRED.—The Board shall
2 suspend the collection of assessments under this sec-
3 tion whenever the unobligated balance in the Reserve
4 Fund reaches \$30,000,000.

5 (2) REFUND OF EXCESS ASSESSMENTS.—If the
6 unobligated balance in the Reserve Fund exceeds
7 \$30,000,000 for three consecutive years, the Sec-
8 retary shall refund the amount in excess of
9 \$30,000,000 to all milk handlers that are in oper-
10 ation as of the date the refund is declared and from
11 which assessments were collected at any time.

12 (3) AMOUNT OF REFUND.—The amount to be
13 paid as a refund to a milk handler referred to in
14 paragraph (2) shall bear the same ratio to the total
15 amount to be refunded as—

16 (A) the total amount of assessments that
17 would have been collected from that milk han-
18 dler during the 12-month period preceding the
19 refund, if not for the suspension of assessments
20 under paragraph (1); bears

21 (B) to the total amount of assessments
22 that would have been so collected during that
23 period from all milk handlers referred to in
24 paragraph (2).

25 (e) COLLECTION AND ENFORCEMENT.—

1 (1) COLLECTION.—Assessments under this sec-
2 tion shall be collected and remitted on a monthly
3 basis to the Board for deposit in the Reserve Fund.
4 The Secretary shall issue an order prescribing the
5 manner in which assessments are to be collected and
6 remitted. The Secretary shall oversee the collection
7 of assessments using the audit system provided
8 under Federal milk marketing orders issued under
9 section 8c of the Agricultural Adjustment Act (7
10 U.S.C. 608c), reenacted with amendments by the
11 Agricultural Marketing Agreement Act of 1937.

12 (2) PENALTIES.—If a milk handler fails to
13 remit the assessments required under this section or
14 fails to comply with such requirements for record-
15 keeping or otherwise as are required by the Board
16 to carry out this section, the milk handler shall be
17 liable to the Secretary for a civil penalty in an
18 amount that is—

19 (A) in the case of an unintentional viola-
20 tion, not less than \$500 but not more than
21 \$5,000; and

22 (B) in the case of an intentional violation,
23 not less than \$10,000 but not more than
24 \$100,000.

1 (3) ENFORCEMENT.—The Secretary may en-
2 force this section in the courts of the United States.

3 (f) NO EFFECT ON PRODUCER PRICES.—Assess-
4 ments collected under this section shall not—

5 (1) reduce the prices paid under the Federal
6 milk marketing orders issued under section 8c of the
7 Agricultural Adjustment Act (7 U.S.C. 608c), reen-
8 acted with amendments by the Agricultural Market-
9 ing Agreement Act of 1937; or

10 (2) be deducted from the amounts that milk
11 handlers must pay to milk producers for milk sold
12 to a milk handler.

13 **SEC. 105. SUBMISSION AND PAYMENT OF CLAIMS OF MILK**
14 **PRODUCERS FOR NONPAYMENT FOR MILK**
15 **SHIPMENTS.**

16 (a) BOARD DETERMINATION OF ELIGIBILITY.—The
17 Board shall determine the eligibility of a milk producer
18 to receive a payment from the Reserve Fund on account
19 of the bankruptcy under title 11, United States Code, of
20 a milk handler.

21 (b) SUBMISSION OF CLAIM.—To apply for a payment
22 from the Reserve Fund, a milk producer shall submit a
23 claim to the Board in such form and containing such in-
24 formation as the Board may require in order to evaluate

1 the claim. The information required by the Board shall
2 include the following:

3 (1) The name of the milk handler the bank-
4 ruptcy of which has resulted in the nonpayment to
5 the milk producer for milk supplied by the milk pro-
6 ducer.

7 (2) The name of the State in which the milk
8 handler is licensed.

9 (3) The number of days of milk shipments for
10 which the milk producer has not been paid on ac-
11 count of the bankruptcy.

12 (4) The quantity of milk involved in those ship-
13 ments.

14 (5) The amount of the payments due to the
15 milk producer for those shipments that has not been
16 paid.

17 (c) ELIGIBILITY CRITERIA.—Payments may be made
18 by the Board on a claim submitted under this section only
19 in the case of the bankruptcy of a milk handler that is
20 licensed by a State and only with respect to milk produced
21 by a milk producer after the date of the enactment of this
22 title.

23 (d) AMOUNT OF PAYMENT.—The total amount paid
24 by the Board under this section to a milk producer on
25 an approved claim shall be equal to 80 percent of the total

1 amount due to the milk producer and not paid on account
2 of the bankruptcy for shipments of milk by the milk pro-
3 ducer occurring during the period—

4 (1) beginning on the date of the first shipment
5 for which the milk producer is not paid; and

6 (2) ending 31 days after that date.

7 (e) PARTIAL PAYMENTS.—If monies in the Reserve
8 Fund are insufficient to make payments under this section
9 in a lump sum, the Board may pay approved claims on
10 a pro rata basis while funds are generated through assess-
11 ments under section 104 to permit payment of the total
12 amount of the approved claims.

13 (f) REIMBURSEMENT OF PAYMENT.—If a milk pro-
14 ducer receives a payment from the Reserve Fund and
15 thereafter recovers any or all of the money owed by the
16 bankrupt milk handler to that milk producer for the same
17 milk, the milk producer shall reimburse the Reserve Fund
18 in an amount equal to the amount recovered from the
19 bankrupt milk handler (or the estate of the bankrupt milk
20 handler) for the same milk, but not to exceed the amount
21 the milk producer received from the Reserve Fund.

22 **SEC. 106. PREEMPTION OF STATE OR LOCAL PAYMENT SE-**
23 **CURITY PROGRAMS.**

24 The provisions of this title preempt any State or local
25 law, regulation, requirement, or order with respect to en-

1 suring the payment of milk producers for milk sold to a
2 milk handler in situations involving the bankruptcy of the
3 milk handler, including State or local programs in the
4 form of—

5 (1) a reserve fund funded by milk handlers to
6 reimburse milk producers for losses incurred as a re-
7 sult of the bankruptcy of a milk handler subject to
8 this title;

9 (2) a statutory trust established for the benefit
10 of milk producers;

11 (3) the creation of a priority in favor or for the
12 benefit of a milk producer, without regard to the
13 order of perfection; or

14 (4) any similar payment security requirements,
15 including surety bonds, letters of credit, pledges of
16 assets, and cash deposits.

17 **TITLE II—STATUTORY TRUST** 18 **FOR LIVESTOCK SELLERS**

19 **SEC. 201. ESTABLISHMENT OF STATUTORY TRUST FOR** 20 **BENEFIT OF SELLERS OF LIVESTOCK TO** 21 **DEALERS AND MARKET AGENCIES.**

22 Title III of the Packers and Stockyards Act, 1921
23 (7 U.S.C. 201 et seq.), is amended by adding at the end
24 the following new section:

1 **“SEC. 318. STATUTORY TRUST ESTABLISHED: LIVESTOCK**
2 **SELLERS.**

3 “(a) DEFINITIONS.—In this section:

4 “(1) CASH SALE.—The term ‘cash sale’ means
5 a sale in which the seller does not expressly extend
6 credit to the buyer.

7 “(2) TRUST CORPUS.—The term ‘trust corpus’
8 means the following assets of a dealer or market
9 agency subsequent to the purchase of livestock from
10 a seller in a cash sale:

11 “(A) Accounts receivable and proceeds de-
12 rived from any resulting sale of the livestock by
13 the dealer or market agency.

14 “(B) The inventory of the dealer or market
15 agency, except as provided in subsection (d) re-
16 garding the rights of a bona fide third-party
17 purchaser for value.

18 “(3) MARKET AGENCY.—The term ‘market
19 agency’ means any person engaged in the business
20 of buying in commerce livestock on a commission
21 basis.

22 “(b) ESTABLISHMENT OF TRUST.—A dealer or mar-
23 ket agency that purchases livestock in a cash sale shall
24 hold the trust corpus in trust for the benefit of the unpaid
25 seller of the livestock until such time as the seller receives
26 payment in full for the livestock. A payment in a cash

1 sale shall not be considered to be made if the instrument
2 by which payment is made is dishonored.

3 “(c) LOSS OF BENEFIT OF TRUST.—An unpaid seller
4 shall lose the benefit of the trust under subsection (b) un-
5 less the seller gives to the dealer or market agency and
6 to the Secretary written notice—

7 “(1) within 15 business days after the seller re-
8 ceives notice that the payment instrument promptly
9 presented for payment has been dishonored; or

10 “(2) within 30 days after the final date for
11 making payment under section 409.

12 “(d) RIGHTS OF THIRD-PARTY PURCHASER.—The
13 trust established under subsection (b) shall have no effect
14 on the rights of a bona fide third-party purchaser who has
15 purchased livestock from a dealer or market agency, with-
16 out regard to whether the livestock are delivered to the
17 bona fide purchaser.

18 “(e) EXEMPTION.—This section shall not apply with
19 respect to a dealer or market agency whose average annual
20 purchases of livestock do not exceed \$250,000.

21 “(f) JURISDICTION.—The district courts of the Unit-
22 ed States shall have jurisdiction in a civil action—

23 “(1) by the beneficiary of a trust established
24 under subsection (b) to enforce payment of the
25 amount held in trust; and

- 1 “(2) by the Secretary to prevent and restrain
- 2 dissipation of the trust corpus.”.

